

January 18, 2012

Mr. Barry A. Bostrom  
Attorney at Law  
2524 N. 8<sup>th</sup> Street  
Terre Haute, Indiana 47804-1811

Re: Your Request for Advice  
**Our File No. A-11-217**

Dear Mr. Bostrom:

This letter responds to your request for advice on behalf of ActRight Fund and the ActRight.com website regarding campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that our advice is based solely on the provisions of the Act. In addition, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).)

### **FACTS**

You are general counsel for ActRight Fund and the ActRight.com website, the online clearinghouse for conservative action. Mr. Brian Brown, chairman of ActRight Fund, 2029 K Street, N.W., Ste. 300, Washington, D.C., 20006, is responsible for state law compliance. He requested that you contact us to request formal written advice.

Your goal is to permit donors to contribute to state and federal candidates nationwide. You will be selecting California state candidates to support in 2012 and would like to provide information about the candidate(s) and invite donors to contribute to the candidate(s) of their choice through your website. Since campaign finance laws were not written to accommodate such fundraising websites, you are asking some questions regarding compliance with California law.

ActRight combines a federal political action committee (ActRight), an I.R.C. Section 527 political organization (ActRight Fund), a 501(c)(4) non-profit corporation (ActRight Action), and a 501(c)(3) non-profit (ActRight Action Educational Trust) into one website, enabling users to pick and choose what activities they want to support. The ActRight Fund is not a registered

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

PAC under Federal law or any state law. It is registered with the IRS and files IRS Form 8872 reports of contributions and expenditures. Separate bank accounts are used for each entity and contributions to candidates are processed separately from donations to other causes.

ActRight Fund plans to register a sponsored California political committee called ActRight California. ActRight California will receive payments for political purposes in excess of \$1,000. It will “bundle” the gifts of the website donors and distribute (contribute) these funds directly to the candidates that website users designate when they click on a “donate” button for a particular California state candidate. Every contribution to a candidate will be bundled and distributed along with the required donor information to the candidate’s campaign on a weekly basis.

## QUESTIONS AND ANSWERS

*1. Does California law permit ActRight Fund (an I.R.C. Section 527 political organization) to sponsor and register a political committee (ActRight California) to accept contributions from individuals for California candidates?*

Yes. Under the Act, ActRight Fund, an I.R.C. Section 527 political organization, may sponsor and register a political committee, ActRight California, to accept contributions from individuals for California candidates.

The Act’s definition of sponsored committee in Section 82048.7, provides that “[a]ny person, except a candidate or other individual, may sponsor a committee.” (Emphasis added.) Section 82047 of the Act defines the term “person” to mean “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.” ActRight Fund, an I.R.C. Section 527 political organization, fits within the Act’s broad definition of “person.”

Under Section 82048.7(b), a person sponsors a committee if any of the following apply:

- “(1) The committee receives 80 percent or more of its contributions from the person or its members, officers, employees, or shareholders.
- (2) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.
- (3) The person, alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee.
- (4) The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.”

Under your facts, ActRight Fund plans to register a sponsored California political committee called ActRight California to make political expenditures on and contributions to

California candidates. ActRight California will be undertaking political activity in support of candidates and causes and is not simply a for-profit business enterprise processing contributions such as a credit card company or Internet payment service. You state that ActRight California will receive payments for political purposes in excess of \$1,000.

Based on the committee activities you have described, ActRight California will be a recipient committee under Section 82013(a). To create the committee, you need to set up a bank account and file a Statement of Organization (Form 410), with the California Secretary of State's office. In addition, because ActRight California will probably expend a majority of its budget in California for statewide elections, it will be a state general purpose committee.<sup>2</sup>

Under the facts provided, ActRight California will be a sponsored committee because ActRight California will receive all or nearly all of its administrative services from ActRight Fund, and will function under the solicitation and expenditure policies set by ActRight Fund. (Section 82048.7 and Regulation 18419.) As a sponsor, ActRight's name must appear in the name of the committee, e.g., "ActRight California." (Section 84102 and Regulation 18419(b)(1).)

The report filing dates for a state general purpose committee are set forth on filing schedules on the FPPC's website.<sup>3</sup> Notice that your committee may have to file 24-hour reports of contributions made near the election. A chart of the California contribution limits applicable to state candidates and committees is also available on the agency's website.<sup>4</sup> Helpful information for state general purpose committees is contained in Campaign Manual 4 for General Purpose Recipient Committees (draft 2009).<sup>5</sup>

As your summary of California law notes, if ActRight California receives a contribution of \$5,000 or more from a person, it is required to send a major donor notice informing the person that they may be required to file campaign reports. (Section 84105 and Regulation 18427.1) A person qualifies as a major donor under the Act by contributing \$10,000 or more in a calendar year to California candidates or committees. (Section 82013(c).)

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<sup>2</sup> New regulations 18227.5 and 18247.5 are effective February 4, 2012, for determining type of committee and jurisdiction, but the new rules do not change the conclusion that ActRight California is a state general purpose committee.

<sup>3</sup> The filing schedule for the June 5, 2012 election is available at: [http://www.fppc.ca.gov/filingschedules/2012/june/3\\_2012\\_004\\_Jan-Jun\\_StGPsjdhlc.pdf](http://www.fppc.ca.gov/filingschedules/2012/june/3_2012_004_Jan-Jun_StGPsjdhlc.pdf). The filing schedule for the November 6, 2012 election is available at: [http://www.fppc.ca.gov/filingschedules/2012/november/3\\_2012\\_005\\_Jul-Dec\\_StGPsjdhlc.pdf](http://www.fppc.ca.gov/filingschedules/2012/november/3_2012_005_Jul-Dec_StGPsjdhlc.pdf).

<sup>4</sup> The Act's contribution limits applicable to state candidates and committees are summarized here: <http://www.fppc.ca.gov/bulletin/Contriblimit201011.pdf>.

<sup>5</sup> Draft Campaign Manual 4 for General purpose committees is located under the agendas tab on the interested persons meetings page: <http://www.fppc.ca.gov/index.php?id=450>.

*2. May ActRight California “bundle” these contributions together for each candidate as designated by the donors, and distribute these contributions to each candidate as a contribution from ActRight California as an “intermediary”?*

Yes, ActRight California may group the contributions raised on its website for each candidate, as designated by the donors, and distribute these contributions to each candidate. When the contributions are distributed to the candidates, each contribution must be reported as from the original contributor who donated via the ActRight website, with ActRight California reported as an intermediary. For specific instructions about reporting ActRight California’s contributions on Form 460, please call Lynda Cassady, Chief of the FPPC’s Technical Assistance Division at (866) ASK-FPPC.

*3. Each individual contributor will be identified and reported on ActRight California reports. Should the candidates also report the individual contributors or do they simply report the “bundled” contribution amount as a single contribution from ActRight California to each candidate?*

The candidates’ disclosure reports must also report the individual contributors who donated to their campaign via the ActRight website, and must report these contributions as being received via ActRight California as an intermediary.

The Act provides that one person might act as an intermediary by collecting a contribution for the benefit of another person. (Section 84302; Regulation 18432.5.) The source of the resulting contribution to the second person is the original contributor, not the intermediary. Under the Act, contributions by intermediaries must be fully disclosed as made from the original contributor through the intermediary. Section 84302 states:

“No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor.”

Regulation 18432.5 further provides that a person is an intermediary for a contribution (1) if the recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution or (2) if the person is an intermediary because under Regulation 18419 they are an intermediate unit of a sponsor that forwards contributions.

We have advised that a person will be considered an intermediary if, at the time of the contribution, the original contributor knowingly and unambiguously earmarked the contribution for deposit with the second person. (See, e.g., *Gray* Advice Letter, No. A-03-068.) Section 85704's prohibition on earmarking states that "[a] person may not make any contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate unless the contribution is fully disclosed pursuant to Section 84302."

Concerning intermediaries, the *Mainardi* Advice Letter, No. A-10-191, advised that a candidate's committee is required to report payments received from the Democratic donor site ActBlue as contributions received through an intermediary, where ActBlue processes online credit card contributions made to campaign committees, compiles a list of Democratic candidates for whom it will accept contributions, has registered with the Internal Revenue Service as a political organization and has filed campaign statements identifying itself as a general purpose committee.

*4. Section 84301 of the Act prohibits contribution(s) "made, directly or indirectly," "in a name other than the name by which such person is identified for legal purposes." Does this provision permit the solicitation of contributions from individual donors earmarked for California candidates on ActRight.com website, which are then distributed (contributed) by ActRight California to the candidates?*

Section 84301 of the Act prohibits an individual from making a campaign contribution in the name of another. It is the so-called "money-laundering" prohibition in the Act. For example, Section 84301 prohibits an individual who has given the maximum in contributions to a candidate from asking five employees or friends to make contributions to the candidate in their own names, and reimbursing the employees or friends for making the contributions.

This provision does not restrict the ActRight.com website from soliciting contributions from individual donors earmarked for California candidates, which are then distributed (contributed) by ActRight California to the candidates, because the contributions are being reported on ActRight California's campaign reports as from the individual donors, and are being reported on the candidates' campaign reports, as from the individual donors via ActRight California as an intermediary. Under your facts, where both the individual donors' names are being reported and the intermediary's name is being reported, there is no issue of a contribution being made in the name of another under Section 84301.

If you have any further questions in the course of setting up the California committee or filing reports for the committee, you may contact me at (916) 322-5660 or you may call the Technical Assistance Division at (866) ASK-FPPC.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

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